FARAD CONTINUATION SHEET NO.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE

CRIMINAL WRIT PETITION NO.119 OF 2006

Office Notes, Office Memoranda of Coram appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders

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Mr.V.K.Singh for the petitioner.

Mr.A.S.Shitole, APP for the State

Coram : R.S.Mohite,J

Date : 30.01.2006

PC

1. Heard both sides. Rule. Rule made returnable forthwith.

2. This is a petition impugning an order passed by the Addl.Chief Metropolitan Magistrate, 11th Court, Kurla on 17.11.2005 refusing to exercise powers relating to return of goods. On perusal of the order it is seen that reliance is placed on Section 6E of the Essential Commodities Act and it is held that the application is not maintainable.

It is contended before me that the said provisions does not come in the way unless confiscation notice is given under Section 6E. APP fairly conceded after obtaining instructions from PI Nirmal who is the investigating officer that he has not even informed the rationing officer and hence, no notice under section 6B has been issued. The law point in question is covered by the judgment of this Court in the case of **Vitthal Pandurang Navle Vs.State of Maharashtra reported in 2003 ALL MR (Cri) 1952,** wherein this Court has taken a view that unless confiscation notice is issued, jurisdiction of Magistrate is not ousted and there is no bar of jurisdiction of this Court. In the circumstances, Magistrate has power to consider the application. Hence, impugned order is quashed and set aside and the matter is remanded back with a direction that the question of tanker will be decided on its own merits by the Magistrate. It is also

noticed that the tanker in question was empty when seized. In the circumstances, pending the final hearing of the application on merits by the concerned Metropolitan Magistrate, the tanker in question bearing no.MH-04 CA 7130 will be returned back to the applicant on his furnishing personal bond and one or two sureties to make up the amount of Rs.7,00,000/- and subject to the further condition that he will undertake to the trial Court to return the tanker as and when called upon. The surety mentioned above will be furnished to the satisfaction of the trial Court and the applicant will not create any 3rd party rights and will not tamper with the tanker. Rule made absolute in the above direction.

(R.S.Mohite,J)